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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,478	02/19/2004	Susanne Sonneveld	CU-3595	4900

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LADAS & PARRY LLP  
224 SOUTH MICHIGAN AVENUE  
SUITE 1600  
CHICAGO, IL 60604

EXAMINER
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PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/782,478

Applicant(s)

SONNEVELD ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-136 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-136 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (7,118,774) or Gelita Special (page 1 starts with the Introduction and is numbered consecutively thereafter).

Coleman et al. disclose a method of making a cereal bar as in claim 82 containing 25-75% ready-to-eat cereal and a first binder and a filler (abstract and col. 10, lines 19-35). The binder system contains a polyhydric alcohol and can contain gelatin and glycerine. The syrups (simple sugars) disclosed in the composition of the binder are not required (col. 6, lines 56-65). Claims 82, 83, differ from the reference in

Art Unit: 1761

the use of less than 30% digestible carbohydrates and the use of "cereal-like core pieces". However, as cereal is disclosed it is seen to be like cereal since it is cereal.

Gelita Special (Gelita) discloses a process of making a nutrition bar containing 31.8 oatmeal, 7.9 cereal chips, 18.6% whole grain extrudate and wheat bran extrudate. The binder is disclosed as containing gelatin hydrolysate and sugar substitutes (page 3, last two para). The ingredients are mixed together to make a bar (page 4, "cereal bars). Claims 82, 83, 98, differ from the reference in the particular amount of carbohydrate in the composition. As each cereal ingredient only contains part carbohydrate, it is seen that there is 30% by weight of digestible carbohydrate in the composition (page 4 under "the dry mixture, and under Ex. Of a recipe for Cereal bars). Therefore, it would have been obvious to make a product containing the claimed amount of digestible carbohydrate.

Claims 84 and 85 further require cutting a step of the moldable mass transverse to obtain a bar, and in making cuts to first obtain a strip. However, this is an age-old way of cutting any material to make bars as in brownies, etc. Gelita S. disclose cutting machines with a lateral product and transverse cutting (page 10, under Mai cutting systems). Therefore, it would have been obvious to cut the material as claimed to make bars.

Claims 86-89 further require heating the binder to from 50 to 70 C before mixing. .Getita S. discloses heating the binder mixture to and then cooling to 60-70 C. (page 4, under Ex. Of a recipe for Cereal Bars). Therefore, it would have been obvious to heat the binder before mixing.

Gelita S. discloses grains such as oatmeal and rice as in claims 90 to 92. The cereal pieces as in the above references are seen to be at least 2 mm. If they are not, it would have been within the skill of the ordinary worker to use cereal-like pieces, which would make the claimed product. Therefore, it would have been obvious to make a product with the claimed size of cereal pieces.

Claims 92-94 require particular amounts of digestible carbohydrates in the form of nuggets and claims 95-97 further require protein in particular amounts and 97 in particular soya nuggets. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to use various known ingredients in the composition of the above references.

Claims 99-103 further require particular amounts of the cereal like core. The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing a food bar, properties such as size of cores are important. It appears that the precise ingredients as well as their proportions affect the size of the food bar core, and thus are result effective variables which one of ordinary skill in the art would routinely optimize. Therefore, it would have been obvious to make a food bar with particular size cores.

Claims 104 and 105 further require that the binding agent is protein-based agent. Gelita S. discloses the use of a gelatine hydrolysate binder with Sorbit Instant, page 4 (Ex. Of a recipe).

Indigestible carbohydrate is disclose as wheat bran by Gelita S. as in claims 107 and 108 and A flavoring agent such as dried fruit is disclosed in Gelita as in claim 108 (, page 4 (Ex. Of a recipe).

Claims 109, 110 further require applying a particulate additive to the surface of the bar, that it is nuts or chips, etc. and then a coating is applied as in claims 111 and 112 made of various known coating ingredients such as chocolate, yogurt and that it is free of simple sugar as in claim 113 and that it is applied to the whole food product as in claim 114. Gelita S. discloses coating with a foam mixture of fruit components. Further coating with chocolate is so old that a reference is hardly needed as in any type of chocolate candy. Also, on page 7, of Gelita, under ... "sugar substitutes" shows the

Art Unit: 1761

product does not require sugar. Therefore, it would have been obvious to use age old method and known ingredients to coat a cereal-like core.

Claims 115-118 further require layers which are free of the cereal-like core, and then applying an edible between slabs and the use of water or fat based layer portions and that the product is simple sugar free. Gelita discloses coating a fruit foam mixture on a layer to make two bars, the use of caramel and fudge mixtures (page 9). The reference does not require simple sugars. In re Levin as above applies. Therefore, it would have been obvious to make various layers containing different ingredients as known in the art.

Claim 119 further requires baking the food product. The reference to Gelita S. disclose that baking and coating lines can be included in the MAI system (page 8, 3<sup>rd</sup> para.).

The product would have been suitable for a controlled carbohydrate as shown by the above references as in claim 82.

Claims 121-129 further require a particular texture profile using a particular test. However, as the process of making the composition has been shown, it would have been obvious to use various tests to determine particular attributes of the product. Therefore, it would have been obvious to test the product for particular characteristics.

Claims 130 –131 are to the method of providing nutritional support by eating the food par of claim 1, also, of claims 130 and 132. However, nothing new is seen in controlling amounts of ingredients, as in In re Boesch and various ingredients, as in In re Levin,. Certainly, the food bar would be beneficial with those that have problems with

Art Unit: 1761

blood glucose levels and insulin resistance. Food bars need to be in a commercial package in order to sell to the public as in claim 134, with indications of how to use as in claims 135 and 136. Therefore, it would have been obvious to make a composition and to use it as in claims 130-136 as disclosed by the above reference and the state of the art.


The limitations of claims 1-81 have been disclosed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 1-8-07

  
**HELEN PRATT**  
**PRIMARY EXAMINER**